IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC., Plaintiff	)	
	)	
v.	)	C.A. NO.: 03-394 E
	)	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC., Defendants	)	ELECTRONICALLY FILED

PLAINTIFF ACCU-SPEC'S BRIEF IN OPPOSITION TO CENTRAL TRANSPORT INTERNATIONAL, INC.'S MOTION FOR RECONSIDERATION

ACCU-SPEC ELECTRONIC SERVICES, INC. files this Brief in Opposition to Central Transport International, Inc.'s ("Central Transport") Motion for Reconsideration, stating as follows:

I. Legal Basis For Granting Reconsideration

The Third Circuit has stated that in order to be entitled to reconsideration, a party must show one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the Court granted the Motion for Summary Judgment; or (3) the need to correct a clear error of law or fact to prevent manifest injustice. Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1995).

II. Central Transport Has Failed To Satisfy The Requirements for Granting Reconsideration

Central Transport appears to be relying on the third basis for granting reconsideration, correcting a clear error of law, because the sole argument in Central Transport's Motion for Reconsideration is its contention that all of the cases relied upon by this Honorable Court in its Opinion dated August 17, 2005 constitute dicta, and as such, do not controlling authority. (Central Transport's Motion for Reconsideration, pp. 2-4). However, the Third Circuit has made clear that, in the absence of contrary authority, dicta may be used as persuasive evidence in support of a court's opinion. Seus v. John Nuveen & Co., 146 F.3d 175, 182 (3d Cir. 1998). Furthermore, the point remains clear that Central Transport has not identified any authority which supports its position, a point which it conceded at oral argument. Because Central Transport has failed to identify any judicial authority in support of its position, its Motion for Reconsideration must be denied.

Central Transport's disregard for the Supreme Court's discussion in Chicago, Milwaukee, St. Paul and Pacific Railway Company v. Acme Fast Freight, Inc., 336 U.S. 465 (1949) is misplaced. In that case, the Supreme Court stated:

> Of course shippers by freight forwarder have for many years been permitted to sue underlying carriers for loss or damage occasioned by the latter. New Jersey Steam Navigation Co. v. Merchants' Bank of Boston, 6 How. 344 (1848); Great Northern Railway Co. v. O'Connor, 232 U.S. 508, 509 (1914). The theory of these actions was that the shipper is the undisclosed principal of its agent, the forwarder, in the latter's contract with the carrier.

Id. at 487, n. 27.

Central Transport does not argue that the Supreme Court misstated the law which preceded the Carmack Amendment. Furthermore, Central Transport does not argue that the Carmack Amendment changed the common law. Therefore, whether or not the Supreme Court's language in Chicago set forth above and relied upon in Gulf & Western Industries v. Old Dominion Freight Line, 633 F. Supp. 688, 692 (M.D. N.C. 1986) is dicta, the pre-Carmack Amendment principles set forth in Chicago remain controlling. For this reason, Central Transport's Motion for Reconsideration must be denied.

This Honorable Court properly recognized that the case of Beautifax, Inc. v. Puerto Rico Marine Mgmt., 611 F. Supp. 537 (D. Md. 1985) had the same factual situation as the present case. In Beautifax, defendant Commerce of Minnesota was a freight forwarder. Commerce issued a bill of lading to the plaintiff and, therefore, was an initial carrier and a proper defendant in the instant action. Defendant Philips Brothers was the delivery carrier under the through bill of lading issued by Commerce of Minnesota and was also a proper defendant in this action. Beautifax, Inc., 611 F. Supp. at 543.

In the present case, the freight forwarder was Logistics Plus. Central Transport was the delivering carrier under the bill of lading issued by Logistics Plus. Therefore, both Logistics Plus and Central Transport are proper defendants under the Carmack Amendment in this lawsuit.

III. Conclusion

For the reasons set forth above, Central Transport has failed to satisfy any of the bases for granting reconsideration. In particular, Central Transport failed to show that this Honorable

Court committed an error of law in denying its Motion for Summary Judgment as to the Carmack Amendment. Therefore, Central Transport's Motion for Reconsideration should be denied.

Respectfully submitted,

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